

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 16

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### Sheriffs, Police, and Constables

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### III. Title or Right to Office

## § 16. De facto peace officers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  4, 11, 20

A person acting as a deputy under appointment by a sheriff or marshal may be a de facto officer even though such person has not qualified as prescribed by law.<sup>1</sup> Generally, all that is required to make an officer de facto is that the officer claim the office, be in possession of it, and perform its duties under the color of election or appointment.<sup>2</sup> However, a jurisdiction may further require a showing that an innocent party detrimentally relied on the actions of the person acting as a deputy sheriff to hold such person a de facto deputy sheriff.<sup>3</sup> Where an elected peace officer ceases to qualify for the office but does not automatically forfeit the office and its accompanying powers, then absent proceedings to compel the officer to vacate the office, the peace officer operates under color of law as a de facto official.<sup>4</sup>

### Caution:

A de facto officer is a "law enforcement officer" for purposes of a statute providing that a battery of a police officer which results in bodily injury raises the offense to a certain class of felony; thus, any battery upon such an officer causing bodily injury increases the offense to that class of felony.<sup>5</sup>

### Practice Tip:

Those involved in an arrestee's capture could be considered de facto deputies, despite their potential lack of compliance with the formalities required by statute for appointment, arising from the absence of proof of a bond filing. Any lack of compliance does not render the arrestee's stop, seizure, detention, or arrest unlawful. The deputies had all been employed with the sheriff's office for a significant amount of time, ranging from eight to 28 years, all deputies indicated that they were bonded and had taken an oath for every sheriff for whom they had worked, and, at the time of arrest, the deputies were performing duties consistent with their appointments and were identifiable to the arrestee as deputy sheriffs who had authority.<sup>6</sup>

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Footnotes

- 1 [Wright v. U.S.](#), 158 U.S. 232, 15 S. Ct. 819, 39 L. Ed. 963 (1895); [Malone v. State](#), 406 So. 2d 1060 (Ala. Crim. App. 1981), writ denied, 406 So. 2d 1066 (Ala. 1981); [Carty v. State](#), 421 N.E.2d 1151 (Ind. Ct. App. 1981).  
As to de facto public officers, see Am. Jur. 2d, Public Officers and Employees[[Westlaw®\(r\) Search Query](#)].
- 2 [Carty v. State](#), 421 N.E.2d 1151 (Ind. Ct. App. 1981).
- 3 [Holloway v. State](#), 342 So. 2d 966 (Fla. 1977).
- 4 [Chambliss v. State](#), 801 So. 2d 824 (Miss. Ct. App. 2001) (constable who no longer met residency requirements continued to operate under color of law and could validly perform arrests).
- 5 [Carty v. State](#), 421 N.E.2d 1151 (Ind. Ct. App. 1981).
- 6 [State v. Griffin](#), 413 S.C. 258, 776 S.E.2d 87 (Ct. App. 2015).

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